In the Supreme Court

OF THE

United States

OCTOBER TERM, 1957

Nos.

LAWRENCE SPEISER, *Appellant,*

vs.

JUSTIN A. RANDALL, as Assessor of Contra Costa County, State of California, *Appellee.*

No. 483

DANIEL PRINCE, *Appellant,*

vs.

CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, *Appellee.*

No. 484

Appeal from the Supreme Court of the State of California.

MOTION TO DISMISS.

DION R. HOLM,
City Attorney of the City and County of San Francisco, State of California,
206 City Hall, San Francisco 2, California,
Attorney for Appellees.

FRANCIS W. COLLINS,
District Attorney of the County of Contra Costa, State of California,

GEORGE W. McCLURE,
Deputy District Attorney of the County of Contra Costa, State of California,
Hall of Records, Martinez, California,

ROBERT M. DESKY,
Deputy City Attorney of the City and County of San Francisco, State of California,
206 City Hall, San Francisco 2, California,
Of Counsel.

Subject Index

Table of Authorities Cited

Constitutions

Statutes

Rules

In the Supreme Court
OF THE
United States

OCTOBER TERM, 1957

NOS.

LAWRENCE SPEISER, *Appellant,* vs. JUSTIN A. RANDALL, as Assessor of Contra Costa County, State of California, *Appellee.*	No.
DANIEL PRINCE, *Appellant,* vs. CITY AND COUNTY OF SAN FRANCISCO, a Municipal Corporation, *Appellee.*	No:

Appeal from the Supreme Court of the State of California.

MOTION TO DISMISS.

Appellees City and County of San Francisco and Justin A. Randall move, pursuant to Rule 16(1), that the appeals from the final judgments of the Supreme Court of the State of California be dismissed for want

of jurisdiction on the ground that the appeals do not present a substantial federal question.

OPINIONS BELOW.

The Superior Court of the County of Contra Costa in the case of *Speiser v. Randall* issued an unreported opinion, which is set forth as Appendix A of the Jurisdictional Statement. The opinion of the Supreme Court of the State of California in said case appears as Appendix C of the Jurisdictional Statement and is officially reported in 48 Advance California Reports 476 and unofficially reported in 311 P. 2d 546.

The Superior Court of the City and County of San Francisco in the case of *Prince v. City and County of San Francisco* issued an unreported opinion, which is set forth as Appendix B of the Jurisdictional Statement. The opinion of the Supreme Court of the State of California in said case appears as Appendix D of the Jurisdictional Statement and is officially reported in 48 Advance California Reports 472 and unofficially reported in 311 P. 2d 544.

The opinions of the California Supreme Court in the causes at bar incorporate the reasoning and the conclusions of that Court in a companion case, *First Unitarian Church of Los Angeles v. County of Los Angeles,* which appears as Appendix E of the Jurisdictional Statement and which is officially reported in 48 Advance California Reports 417 and unofficially reported in 311 P. 2d 508.

JURISDICTION.

The judgments of the Supreme Court of the State of California in these causes were filed on April 24, 1957. Notices of Appeal were filed with the Supreme Court of the State of California on May 27, 1957. Appellants seek to invoke the jurisdiction of this Court under Title 28, U.S.C., Section 1257(2).

Since, pursuant to Rule 15(3) of the Rules of the Supreme Court, appellants have filed a single Jurisdictional Statement for both causes, motions to dismiss for want of a substantial federal question are similarly consolidated.

QUESTIONS PRESENTED.

The State of California by action of its Legislature and a vote of its people, in 1952, enacted a constitutional amendment providing, in part, that no person or organization advocating forcible overthrow of the federal or state government or support of a foreign government against the United States in the event of hostilities would receive any tax exemption from the state or subordinate agencies. The Legislature, in 1953, enacted procedural legislation requiring establishment of this requisite fact by a declaration under oath in certain cases involving property tax exemption.

California by a constitutional provision exempts one thousand dollars of the property of each veteran of certain specified wars and campaigns from state

property taxation. In these cases, two veterans, plaintiffs in the trial court and appellants in this Court, sought the stated property tax exemption without executing the required declaration of non-advocacy appended to the property tax return. The appellee assessor, Justin A. Randall, of Contra Costa County, and the Assessor of the appellee City and County of San Francisco denied the exemptions. After appellants brought separate actions to challenge said rulings, the action of the assessors was ultimately upheld by the judgments and opinions of the California Supreme Court.

The questions presented are, with one exception, related to the asserted invalidity, under the United States Constitution, of the state constitutional provision precluding grants of tax exemption to those who advocate violent overthrow of the government and of the procedural statute which implements said provision, as applied to the property tax exemption given under California law to a veteran by reason of his military service.

Briefly stated, these issues are raised:

1. Does an oath declaration requirement applying only to present, personal advocacy of forcible overthrow of the federal and state governments and support of a foreign government in event of hostilities, as a condition to the award of a tax exemption to veterans for military service, violate freedom of speech and assembly or equal protection of the laws as protected by the First and Fourteenth Amendments to the United States Constitution?

2. Does such requirement violate procedural due process under the Fourteenth Amendment or constitute a Bill of Attainder, under Article I, Section 9, Clause 3?

3. Does such requirement violate the privileges and immunities clause of the Fourteenth Amendment?

4. Does such requirement violate Article VI, Clause 2, either by invading a field pre-empted by or by being in conflict with the federal criminal statutes defining and providing criminal penalties for subversion and sedition?

STATEMENT.

The facts in both of these cases are based solely on stipulations introduced in the respective trial Courts. While there is no factual conflict, these is no such concession as claimed by appellants, on pages seven and eight of their Jurisdictional Statement, that appellants were in all respects properly qualified to receive tax exemptions except for their failure to execute the non-advocacy declaration. Since the respective stipulations merely covered fulfillment of such requirements as veteran status, residence and possession of no more than the requisite amount of property and did not extend to the fact of advocacy or non-advocacy by the appellants, there is nothing in the record constituting any such concession. Rather, the conclusions of law of the trial court in the *Prince* case found that that appellant did not qualify under the oath provisions "in that he has not shown himself

to be a person entitled to receive the said exemption." (Clerk's transcript, proceedings in the San Francisco Superior Court, page 45, line 20 through page 46, line 2.) As the California Supreme Court held, an "assumed fact" as to the non-existence of advocacy is not enough for the purposes of taxation. (Appendices to Statement, page 47.)

In the *Prince* case, the Superior Court of the City and County of San Francisco rendered judgment against Prince in an action brought by him against the City and County of San Francisco to recover taxes paid under protest, together with a full and carefully documented opinion of Judge William T. Sweigert which appears as Appendix B to the Jurisdictional Statement (page 6 of Appendices).

In the *Speiser* case, the Superior Court of Contra Costa County rendered judgment in favor of appellant Speiser in an action for declaratory relief against Justin A. Randall, the Assessor of said county, with an opinion of five judges sitting en banc pursuant to a local practice, which appears as Appendix A of this Statement (page 1 of Appendices).

Appeals were taken to the California Supreme Court in both cases, where the court, after exhaustive briefing and full oral argument, decided that no federal or state constitutional provision is violated by requiring a veteran to take a narrowly drawn oath limited to present, personal non-advocacy of forcible overthrow of the United States and State governments and of support of a foreign government against the United States in the event of hostilities as a rea-

sonable condition to qualification for a tax exemption given specially to veterans by reason of their veteran status alone, as a reward for and incentive to patriotism.

There is no question that the asserted federal questions were timely claimed and appropriately preserved.

The relevant provisions of the state Constitution and state law are the following:

California Constitution, Article XIII, Section 1, states the general rule of the taxability of all property in the state:

> "All property in the State except as otherwise in this Constitution provided, not exempt under the laws of the United States, shall be taxed in proportion to its value, to be ascertained as provided by law, or as hereinafter provided. . . ."

Section 201, Revenue and Taxation Code of the State of California constitutes a legislative implementation of the foregoing rule:

> "All property in this State, not exempt under the laws of the United States or of this State, is subject to taxation under this code."

California Constitution, Article XIII, Section 1¼, creates the veterans' exemption:

> "The property to the amount of $1,000 of every resident of this State who has served in the army, navy, marine corps, coast guard or revenue marine (revenue cutter) service of the United States (1) in time of war, or (2) in time of peace, in a campaign or expedition for service in which a

medal has been issued by the Congress of the United States, and in either case has received an honorable discharge therefrom, or who after such service of the United States under such conditions, has continued in such service, or who in time of war is in such service, or who has been released from active duty because of disability resulting from such service in time of peace or under other honorable conditions, or lacking such amount of property in his own name, so much of the property of the wife of any such person as shall be necessary to equal said amount; . . . shall be exempt from taxation; provided, this exemption shall not apply to any person named herein owning property of the value of $5,000 or more, or where the wife of such soldier or sailor owns property of the value of $5,000 or more. No exemption shall be made under the provisions of this section of the property of a person who is not legal resident of the State; . . ."

(Deletions cover other extensions of the exemption not relevant to this case.)

The provision of the State Constitution which authorizes the loyalty qualification requirement before this Court is Article XX, Section 19:

"Notwithstanding any other provision of this Constitution, no person or organization which advocates the overthrow of the Government of the United States or the State by force or violence or other unlawful means or who advocates the support of a foreign government against the United States in the event of hostilities shall:

(a) Hold any office or employment under this State, including but not limited to the University

of California, or with any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State: or

(b) Receive any exemption from any tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State.

The Legislature shall enact such laws as may be necessary to enforce the provisions of this section."

The 1953 session of the Legislature enacted Section 32 of the Revenue and Taxation Code as a procedural measure implementing the constitutional provision in the field of property taxation:

"Any statement, return, or other document in which is claimed any exemption, other than the householder's exemption, from any property tax imposed by this State or any county, city or county, city, district, political subdivision, authority, board, bureau, commission or other public agency of this State shall contain a declaration that the person or organization making the statement, return, or other document does not advocate the overthrow of the Government of the United States or of the State of California by force or violence or other unlawful means nor advocate the support of a foreign government against the United States in event of hostilities. If any such statement, return, or other document does not contain such a declaration, the person or organization making such statement, return, or other document shall not receive any exemption from

the tax to which the statement, return, or other document pertains. Any person or organization who makes such declaration knowing it to be false is guilty of a felony. This section shall be construed so as to effectuate the purpose of Section 19 of Article XX of the Constitution."

THE FEDERAL QUESTIONS PRESENTED BY APPELLANTS ARE NOT SUBSTANTIAL.

PRELIMINARY STATEMENT.

Appellees, the City and County of San Francisco and Assessor of the County of Contra Costa, State of California, have made this motion on the basis that the declaration included as part of the affidavit required for the veterans' exemption is a narrowly drawn form of oath limited to language judicially approved by this Court. In prescribing only present, as distinguished from past advocacy, in touching personal conduct, as differentiated from mere affiliations, or beliefs, and in being limited to that narrow class of speech eliciting forcible overthrow of our government and war support of foreign governments, this form of declaration is justified as a reasonable condition for qualification for civil benefits of tax exemption not extended to all citizens, but merely to veterans as a reward for and incentive to the patriotism which the Legislature and People have determined and the Supreme Court of California has found will be thus stimulated and fostered and which advocates of destruction of the government derogate.

As only the Jurisdictional Statement in the instant causes has been served on appellees, appellees will merely refer to same and will not discuss the Jurisdictional Statement in *First Methodist Church of San Leandro v. Hortsmann* and *First Unitarian Church v. Horstmann,* sought to be incorporated on page ten of the Jurisdictional Statement. Appellees will answer appellants' contentions seriatim.

I. PROVISIONS OF THE OATH, AS PROPERLY INTERPRETED BY THE CALIFORNIA SUPREME COURT IN LINE WITH THE DECISIONS OF THIS COURT, ARE DIRECTED TO ONLY THAT SPEECH WHICH CAN BE PROPERLY REGULATED.

In contending that this form of oath transgresses the rule of *Yates v. United States,* 354 U.S.....,, 1 L. Ed. 2d 1356, that advocacy of ideas as distinguished from action may not be inhibited, appellants make a fundamental error. Appellants fail to recognize that the effect of the particular regulation on speech must be measured by the effect of the language of the oath, *as properly interpreted.*

In the *Yates* case, this Court held that the broad language of the Smith Act (recodified as 18 U.S.C. §2385, 62 Stat. 808), which covers not only advocating, but also abetting, advising and teaching the "duty, necessity, desirability or propriety" of forcible overthrow would be properly interpreted so as to be limited to "advocacy directed at promoting unlawful action":

> "We are thus faced with the question whether the Smith Act prohibits advocacy and teaching of

forcible overthrow as an abstract principle, divorced from any effort to instigate action to that end, so long as such advocacy or teaching is engaged in with evil intent. We hold that it does not . . .

"We need not, however, decide the issue before us in terms of constitutional compulsion, for our first duty is to construe this statute. In doing so we should not assume that Congress chose to disregard a constitutional danger zone so clearly marked, or that it used the words 'advocate' and 'teach' in their ordinary dictionary meanings when they had already been construed as terms of art carrying a special and limited connotation. . . . The statute was aimed at the advocacy and teaching of concrete action for the forcible overthrow of the Government, and not of principles divorced from action."

354 U.S. at ....., 1 L.Ed. 2d at 1374-1376.

Further, the opinion held that a purpose to cause others to engage in resistance to the government "perhaps during war or during attack upon the United States from without" would be covered by the statute—and stated:

"It is not necessary for conviction here that advocacy of 'present violent action' be proved."

354 U.S. at ....., 1 L.Ed. 2d at 1382, 1386;

See also 1384.

The opinion of the California Supreme Court is in full compliance with the mandate of this Court in the *Yates* case. The California opinion (Appendices, page 39) states that the oath requirement "is not a

limitation on mere belief but is a limitation on action—the advocacy of certain prescribed conduct." The state opinion significantly adds, "Advocacy constitutes action and the instigation of action, not mere belief or opinion." Further in the opinion (Appendices, pages 46-47), the California Supreme Court, in a discussion of *Dennis v. United States,* 341 U.S. 494, directly defined and thus limited the oath requirement *to only that activity prescribed by the Smith Act* (italics added):

> "In that case [Dennis v. United States] the court upheld an instruction to the jury that if the defendants actively advocated governmental overthrow by force and violence as speedily as circumstances would permit, then as a 'matter of law . . . there is sufficient danger of a substantive evil that the Congress has a right to prevent to justify the application of the statute under the First Amendment of the Constitution.' *In the present case the constitutional provision is concerned with those who advocate the same prohibited activity.*" (italics added)

Thus the California Supreme Court has placed the same interpretation and the same limitations on the application of the tax exemption qualification requirement as this Court has done in regard to the Smith Act in the *Yates* and *Dennis* cases. See *Garner v. Board of Public Works of Los Angeles,* 341 U.S. 716, 723-724 (oath containing similar wording.)

The reversal of the judgments of conviction in the *Yates* case was based merely on faulty instruction of the jury and represented an upholding and not a

repudiation of the statutory language condemning the proscribed advocacy. Similar or broader language than that used in the California Constitution and statutory provisions has been consistently upheld by this Court, in criminal prosecutions as well as in oath cases revoking civil benefits as well as conditioning qualification for same.

Dennis v. United States, supra;

American Communications Association v. Douds, 339 U.S. 382;

Gerende v. Board of Supervisors, 341 U.S. 56 (oath form covered "advising" and "teaching", in addition);

Garner v. Board of Public Works, supra, (similar form);

Pockman v. Leonard, 39 Cal. 2d 676, appeal dismissed for want of a substantial federal question, 345 U.S. 962;

Hirschman v. County of Los Angeles, 39 Cal. 2d 698, cert. denied as *Petherbridge v. Los Angeles County,* 345 U.S. 1002.

Said cases have all upheld regulations expressly directed to "advocacy" of forcible overthrow.

II. THE ONLY ISSUE IN THE PRESENT CASE IS THE CONSTITUTIONALITY OF THE APPLICATION OF THE OATH REQUIREMENT TO APPELLANTS.

On pages thirteen and fourteen of their Statement, appellants raise contentions not made in the lower

courts. They thus ignore California Revenue and Taxation Code Section 26:

> "If any provision of this code, or its application to any person or circumstance, is held invalid, the remainder of the code, or the application of the provision to other persons or circumstances, is not affected."

Moreover, under state law, particularly in tax cases, only the person injuriously affected by the provision may complain.

> *County of Los Angeles v. Eikenberry,* 131 Cal. 461, 468, 63 Pac. 766, 768;
>
> See also, *People v. Perry,* 212 Cal. 186, 193, 298 Pac. 19, 22, 76 ALR 1331.

Since the application of the challenged provisions to other taxpayers is neither at issue nor in any manner indicated in the record, no question is presented to this Court at this time as to such applications. Cf. *Parker v. County of Los Angeles,* 338 U.S. 327.

Rather, the California Supreme Court specifically indicated that there are special reasons for the validity of the application of the oath provision to veterans. *Prince v. City and County of San Francisco,* Appendix D (Appendices, page 23) and *First Unitarian Church of Los Angeles v. County of Los Angeles* (discussing the veterans' tax exemption) Appendix E (Appendices, page 45.) These reasons are found to be that veterans as the recipients of such special benefits, are intended to be rewarded for past patriotism, to be encouraged as to their present loyalty and to serve as an example of dedicated service. These rea-

sons, found by the California Supreme Court to be the public purposes involved, justify as the only issue at bar, the application of the property tax exemption qualification to veterans, as distinguished from others who qualify not by reason of a special personal status but by reason of the nature or type of property owned or, as organizations, by the nature of their purposes or activities.

While appellants rely on *American Communications Association v. Douds,* 339 U.S. 382, as limiting the use of the oath procedure to situations involving a few individuals, the full holding of that case expresses the broader test that in a case of an "indirect, conditional, partial abridgment," the effect of the regulation is to be weighed as against the public interest served.

> "When particular conduct is regulated in the interest of public order, and the regulation results in an indirect, conditional, partial abridgment of speech, the duty of the courts is to determine which of these two conflicting interests demands the greater protection under the particular circumstances presented. . . ." 339 U.S. at 399.

Further language in the *Douds* case fully supports our position that the clear and present danger test is applied differently to a limited abridgment of speech protecting a substantial public interest other than basic national security.

> "But in suggesting that the substantive evil must be serious and substantial, it was never the intention of this Court to lay down an absolutist test measured in terms of danger to the Nation.

> When the effect of a statute or ordinance upon the exercise of First Amendment freedoms is relatively small and the public interest to be protected is substantial, it is obvious that a rigid test requiring a showing of imminent danger to the security of the Nation is an absurdity. . ." 339 U.S. at 397.

In the present cases the California Supreme Court has determined from the subject legislation that substantial public interests are served thereby. In *Dennis v. United States, supra,* 341 U.S. at 506, this Court analyzed and approved its prior holding in *Gitlow v. New York,* 268 U.S. 652, as to the effect to be given to a state regulation specifically directed at that narrow type of speech involved in those cases, as in the causes at bar.

> "Gitlow, however, presented a different question. There a legislature had found that a certain kind of speech was, itself, harmful and unlawful. The constitutionality of such a state statute had to be adjudged by this Court just as it determined the constitutionality of any state statute, namely, whether the statute was 'reasonable'. Since it was entirely reasonable for a state to attempt to protect itself from violent overthrow, the statute was perforce reasonable."
>
> *Dennis v. United States, supra,* 341 U.S. at 506.

Also see:

> *American Communications Association v. Douds,* 339 U.S. at 401 (effect of legislative determination.)

Judged by these standards, this narrow form of oath, couched in language approved by this Court (see Sections I, *supra*, and III, *infra*), is permissible as an "indirect, conditional, partial abridgment of speech" since it operates not as a criminal sanction, as a revocation of public employment rights or as a condition to holding elective office (all of which have been approved by this Court), but merely as a condition to the qualification for the award of a limited tax exemption benefit dedicated to securing the very objectives of patriotism which the oath has been expressly found to serve. Judged by its limited impact as contrasted with the public purpose served, the constitutionality of this legislation is affirmatively established.

American Communications Association v. Douds, supra;
Dennis v. United States, supra;
Garner v. Board of Public Works of Los Angeles, supra;
Gerende v. Board of Supervisors, supra;
Adler v. Board of Education, 342 U.S. 485.

III. THE INCLUSION OF "ADVOCACY OF THE SUPPORT OF A FOREIGN GOVERNMENT AGAINST THE UNITED STATES IN EVENT OF HOSTILITIES" WITHIN THE CALIFORNIA CONSTITUTIONAL PROVISION AND STATUTE PRESENTS NO SUBSTANTIAL FEDERAL QUESTION.

Appellants misread the decision of this Court in *Yates v. United States, supra,* which, contrary to their

contention referred to and reaffirmed the holding of the *Dennis* case "that advocacy of violent action to be taken at some future time was enough." 354 U.S. at ....., 1 L.Ed. 2d at 1376. The *Dennis* case held, as noted by the *Yates* case, that the future action need only be "at a propitious time" or "when the leaders feel the circumstances permit." 341 U.S. at 507.

Hence, we contend that advocacy, as an accepted concept of action by the way of support of a foreign government in the future contingency of war between it and the United States, is subject to regulation as conduct similar to and closely allied with advocacy of forcible overthrow, as a form of accomplishing same through destruction of the government. The California Supreme Court (Appendices, page 46) similarly held that such conduct would frustrate the state's program of tax exemption, as found by that Court to have been so limited as to exclude advocacy of such conduct, in the attainment of public purposes by the Legislature and the electorate. It is noteworthy that even the privileges of law practice and of a university education have been denied by reason of failures, respectively, to take an oath of allegiance and support of federal and state governments and to engage in compulsory military training. *In re Summers* 325 U.S. 561; also see *In re Anastaplo* (Supreme Court, Illinois), 3 Ill. 2d 471, 121 N.E. 2d 826, appeal dismissed for want of a substantial federal question and cert. den., 348 U.S. 946; *Hamilton v. Regents of the University of California,* 293 U.S. 245.

Likewise, when appellants contend that the language dealing with support of a foreign government, is judicially unconstrued, they ignore those authorities, cited by appellees to the California Supreme Court, which upheld Section 3 of the Espionage Act of 1917 (Act of June 15, 1917, c. 30, 40 Stat. 217, as amended by Act May 16, 1918, c. 75, §1, 40 Stat. 553) which imposed penal sanctions on "Whoever shall by word or act support or favor the cause of any country with which the United States is at war, or by word or act oppose the cause of the United States therein. . . . "

Lockhart v. United States,
264 Fed. 14, cert. den. 254 U.S. 645;
Wimmer v. United States,
264 Fed. 11, cert. den. 253 U.S. 494;

See also, upholding the Espionage Act of 1917, in its entirety;

Frohwerk v. United States, 249 U.S. 204;
Debs v. United States, 249 U.S. 211;
Abrams v. United States, 250 U.S. 616;
United States v. Burleson, 255 U.S. 407.

Moreover, in view of the fact of prior judicial definition of the words "support" and "hostilities", there can be no just claim that the terms in question are unconstitutionally vague.

United States v. Schulze, 253 Fed. 377, 379-380, aff'd as *Schulze v. United States,* 259 Fed. 189 (definition of "support");
Schoborg v. United States, 264 Fed. 1, at 5 (same);

Samuels v. United Seamen's Service, Inc., 165 F. 2d 409, 411-412 (definition of hostilities as "open and hostile warfare activity");

Burger v. Employees' Retirement System, 101 Cal. App. 2d 700, 702 (definition of "hostilities"; accord.)

See also:

Kaiser v. Hopkins, 6 Cal. 2d 537 (definition of "war" for purpose of veterans' property tax exemption as active conduct of hostilities.)

IV. THE DECISION OF THE CALIFORNIA SUPREME COURT PROPERLY UPHOLDS A PERMISSIBLE REGULATION OF THAT SPEECH ADVOCATING FORCE AND VIOLENCE IN A PROPER RELATIONSHIP TO PERMISSIBLE PUBLIC OBJECTIVES.

As the California Supreme Court has found (also see Section II, *supra*), the limitations on the state's tax exemption program are justified on the basis of preservation of the purpose of the tax exemption as a reward for past and an incentive to continued patriotism and in discouraging participation in the violent overthrow or destruction of our government by limiting rewards to those who are not so engaged.

In view of the limited application of the clear and present danger test to regulations with a "relatively small" effect on First Amendment freedoms and a substantial public interest at stake (*American Communications Association v. Douds*, supra, 339 U.S.

at 397, Section II, supra), this conditional non-penal limitation on that type of speech otherwise subject to criminal proscription fulfills the test stated both as aiding to prevent advocacy of destruction of the government and perversion of the fundamental patriotic purpose of the tax exemption.

To the extent possible for a self-executing state constitutional amendment submitted to and enacted by vote of the people, there is a clear intendment of these substantial purposes, as found by the California Supreme Court.

It need hardly be pointed out that, properly considered from the individual standpoint, denial of a limited tax exemption, awardable in the reasonable discretion of the state, has far less effect on the extent of free speech than criminal convictions and denials of private and public offices and employment upheld, on some occasions, on provisions in terms more restrictive of First Amendment freedoms than the narrow language at bar. (See cases cited Section II, supra.) Thus, the limited effect of the provisions before this Court, weighed against the substantial public interest protected by the enactments, justifies the determination of the California Supreme Court, made on examination of the precedents of this Court, that the public interest "demands the greater protection under the particular circumstances presented." *American Communications Association v. Douds, supra,* 339 U.S. at 399.

Thus distinguished are conclusions of other state courts as to whether other public interests are served

by other (and incidentally broader) types of oath regulations. Cf. *Lawson v. Housing Authority of City of Milwaukee* (Supreme Court, Wisconsin) 270 Wis. 269, 70 NW 2d 605, cert. den. 350 U.S. 882 (dealing with an oath of *non-membership* in organizations listed as subversive.

V. THERE IS NO CONFLICT AMONG ANY COURTS, STATE OR FEDERAL, AS TO WHETHER AN OATH PROPERLY RESTRICTED TO PRESENT, PERSONAL ADVOCACY OF VIOLENT OVERTHROW AND DESTRUCTION OF OUR GOVERNMENT MAY BE A CONDITION TO QUALIFICATION FOR TAX EXEMPTION AWARDED SPECIFICALLY FOR PUBLIC PURPOSES IMPERILED BY SUCH ADVOCACY.

As appellants themselves admit, whether it is a privilege or a right which is concerned is not controlling. As pointed out in the previous section, there is no basic distinction in any event in the test by which the interests of free speech are to be balanced, in the case of an "indirect, conditional, partial abridgment" as against the substantial quality of the public purpose to be served. *American Communications Association v. Douds, supra,* 339 U.S. at 399. As this Court also there stated, after listing numerous instances in which First Amendment rights have been held properly infringed to protect the public from various evils of conduct, prejudicing privacy, municipal government, health, moral standards, the public service or the bar:

> "We have never held that such freedoms are absolute. The reason is plain. As Mr. Chief Justice Hughes put it, 'Civil liberties, as guar-

anteed by the Constitution, imply the existence of an organized society maintaining public order without which liberty itself would be lost in the excesses of unrestrained abuses.' Cox v. New Hampshire, supra (312 U.S. at 574, 85 L.Ed. 1052, 61 S. Ct. 762)."

339 U.S. at 399.

Appellants do not cite one case that holds an oath or other qualification requirement invalid when same has been based upon a personal pledge of present non-advocacy of forcible overthrow of the government.

In the public housing oath cases cited by appellants, there was involved not only a different public purpose——i.e., providing better housing that was not served, but the oath mechanism also not only proscribed affiliation but extended the proscription to organizations loosely named by mere administrative fiat. Indeed, *Rudder v. United States,* 226 F. 2d 51, 53-54 and *Housing Authority of the City of Los Angeles v. Cordova,* 130 Cal. App. 2d Supp. 883, 884, 279 P. 2d 215, and *Kutcher v. Housing Authority of Newark,* (Supreme Court, New Jersey), 20 N. J. 181, 119 A. 2d 1, 4, cited by appellants, all expressly except from the decisions situations where tenants of housing projects are sought to be evicted because engaged in advocating violent overthrow or are subversive.

Likewise the decision of *Danskin v. San Diego Unified School District,* 28 Cal. 2d 536, to the extent it is not superseded by the decisions of the California Supreme Court in the present cases, similarly ex-

cluded from consideration personal advocacy of overthrow and also involved a complete prohibition of speech on all topics, not confined to such advocacy. Cf. *DeJonge v. Oregon,* 299 U.S. 353.

Appellants ignore the state cases which by forms of oaths and regulations much closer to those at bar have upheld renunciation of present advocacy of destruction of the government as a condition to appropriate civil benefits.

Huntamer v. Coe, (Supreme Court, Washington) 40 Wash. 2d 767, 246 P. 2d 489 (oath —elected officials);

Fitzgerald v. City of Philadelphia (Supreme Court, Pa.) 376 Pa. 379, 102 A. 2d 887 (oath ——dismissal of staff nurse in city hospital);

Pickus v. Board of Education of the City of Chicago (Supreme Court, Illinois), 9 Ill. 2d 599, 138 NE 2d 532 (oath—dismissal of teacher);

Communist Party v. Peek, 20 Cal. 2d 536, 127 P. 2d 889 (denial of participation in primary election to party advocating or teaching forcible overthrow);

Steinmetz v. Board of Education, 44 Cal. 2d 816, 285 P. 2d 617, cert. den., 351 U.S. 915 (dismissal of state college professor for failure to answer before Board re subversive affiliations);

Board of Education v. Cooper, (District Court of Appeal, California) 136 Cal. App. 2d 513, 289 P. 2d 80 (dismissal of teacher—failure to reply as to "present personal advocacy");

Appeal of Albert (Supreme Court, Pa.) 372 Pa. 13, 92 A. 2d 663 (dismissal of teacher involved in advocacy and subversion);

Milasinovich v. Serbian Progressive Club (Supreme Court, Pa.), 369 Pa. 26, 84 A. 2d 571 (corporate charter revoked for advocacy of overthrow of government);

Davis v. University of Kansas, 129 F. Supp. 716, 718 (dismissal of professor for failure to answer as to subversive affiliation and activity);

In re Anastaplo, supra, appeal dis. for want of a substantial federal question, *supra* (denial of admission to bar applicant who refused to answer as to affiliations and stated belief in forcible overthrow);

Cf. *Konigsberg v. State Bar of California,* 354 U.S. ....., at ....., 1 L.Ed. 2d 810 at 824-825 where it was expressly determined that the bar applicant not only did not and had not advocated violent overthrow but had testified under oath to and previously stated disavowal of and active opposition to advocacy of force and violence.)

The above cases, where advocacy of forcible overthrow and failure to give duly constituted administrative authority information as to same allowed revocation of benefits, constitute a large body of state authority that even more amply justifies reasonable refusal of a benefit for which the applicant must affirmatively qualify as part of a civil administrative

process subject to judicial review. Cf. *In re Anastaplo, supra.* Under California law, the burden of proof for qualification for a tax exemption is on the taxpayer. *Chesney v. Byram,* 15 Cal. 2d 460, 101 P. 2d 1106 (veterans' exemption.)

Combined with the sanction of the restriction and oath form at bar as a permissible speech regulation by this Court in the *Dennis, Douds, Garner, Gerende* and *Adler* cases, which also fully answer other contentions as to due process, equal protection, privileges and immunities, and bill of attainder which are raised but not briefed by appellants, the authorities lend strong support to our contention that no substantial federal question is raised by appellants. The only other question, that of asserted federal supersession by virtue of the laws providing penal sanctions for sedition, we assert to be likewise insubstantial since, as the California Supreme Court observed, there would be no supersession of a civil regulation controlling the subjects of state taxation, where the federal government has obviously not entered, much less occupied the field, nor have the decisions of this Court upholding state civil loyalty regulations been deemed affected, in more recent opinions of this Court, by the decision of *Commonwealth of Pennsylvania v. Nelson,* 350 U.S. 497. See *Slochower v. Board of Education,* 350 U.S. 551.

CONCLUSION.

Since all federal questions have been resolved in precedent or in principle by this Court and since appellants have thus not complied with California law as to qualification for the subject tax exemptions, we respectfully ask that the motion to dismiss the appeals in these causes be granted.

Dated, San Francisco, California,
October 16, 1957.

Respectfully submitted,

DION R. HOLM,
City Attorney of the City and County of San Francisco,
State of California,
Attorney for Appellees.

FRANCIS W. COLLINS,
District Attorney of the County of Contra Costa,
State of California,

GEORGE W. McCLURE,
Deputy District Attorney of the County of Contra Costa,
State of California,

ROBERT M. DESKY,
Deputy City Attorney of the City and County of San Francisco,
State of California,
Of Counsel.